

ITW

Docket No.: 3749-0113PUS1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Eihachiro KATO et al.

Application No.: 10/581,086

Confirmation No.: 9472

Filed: May 31, 2006

Art Unit: N/A

For: FERMENTED FOOD

Examiner: Not Yet Assigned

LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Subsequent to the filing of the above-identified application on May 31, 2006, attached hereto is an English translation of the International Preliminary Report on Patentability (Forms PCT/IB/338 and PCT/IPEA/409) that should be made of record in the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or to credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Dated: OCT 12 2006

Respectfully submitted,

By ma
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Attachment(s)

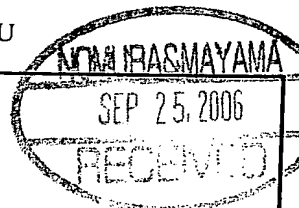
From the INTERNATIONAL BUREAU

PCT

NOTIFICATION OF TRANSMITTAL
OF COPIES OF TRANSLATION
OF THE INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY
(CHAPTER I OR CHAPTER II
OF THE PATENT COOPERATION TREATY)
(PCT Rules 44bis.3(c) and 72.2)

To:

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JAPON



Date of mailing (day/month/year) 14 September 2006 (14.09.2006)		
Applicant's or agent's file reference FP-046PCT	IMPORTANT NOTIFICATION	
International application No. PCT/JP2004/018352	International filing date (day/month/year) 09 December 2004 (09.12.2004)	
Applicant MEIJI UNIVERSITY et al		

1. Transmittal of the translation to the applicant.

- ☐ The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter I).
- ☒ The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter II).

2. Transmittal of the copy of the translation to the designated or elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following designated or elected Offices requiring such translation:

EP, KR

The following designated or elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DZ, EA, EC, EE, EG, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OA, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK, SL, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability (Chapter II).

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned within the applicable time limit (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO
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TRANSLATION

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference FP-046PCT	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/JP2004/018352	International filing date (day/month/year) 09.12.2004	Priority date (day/month/year) 22.12.2003
International Patent Classification (IPC) or national classification and IPC A23L1/10, A23L1/105, A23L1/172, A23L1/20		
Applicant MEIJI UNIVERSITY		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

3. This report is also accompanied by ANNEXES, comprising:

a. ☐ (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:

☐ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the report
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability: citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/JP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/018352

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:
 - ☐ international search (Rule 12.3 and 23.1(b))
 - ☐ publication of the international application (Rule 12.4)
 - ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
 - ☒ the international application as originally filed/furnished
 - ☐ the description:
 - pages _____ as originally filed/furnished
 - pages* _____ received by this Authority on _____
 - pages* _____ received by this Authority on _____
 - ☐ the claims:
 - nos. _____ as originally filed/furnished
 - nos.* _____ as amended (together with any statement) under Article 19
 - nos.* _____ received by this Authority on _____
 - nos.* _____ received by this Authority on _____
 - ☐ the drawings:
 - sheets _____ as originally filed/furnished
 - sheets* _____ received by this Authority on _____
 - sheets* _____ received by this Authority on _____
 - ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
 - ☐ the description, pages _____
 - ☐ the claims, nos. _____
 - ☐ the drawings, sheets/figs _____
 - ☐ the sequence listing (*specify*): _____
 - ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - ☐ the description, pages _____
 - ☐ the claims, nos. _____
 - ☐ the drawings, sheets/figs _____
 - ☐ the sequence listing (*specify*): _____
 - ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/018352

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	1-10	YES
	Claims		NO
Inventive step (IS)	Claims	1, 5, 8-10	YES
	Claims	2-4, 6-7	NO
Industrial applicability (IA)	Claims	1-10	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

Documents 1 to 3, indicated below, are cited in the international search report.

Document 1: JP 2003-235493 A (Fujikko Kabushiki Kaisha),
26 August 2003

Document 2: Critical Reviews in Microbiology, 1993, Vol.
19, No. 3, pages 137 to 188

Document 3: JP 2004-519238 A (OLLIGON AB.), 02 July 2004

Documents 4 to 6, indicated below, are newly cited in the present international preliminary report on patentability.

Document 4: JP 6-319456 A (Kabushiki Kaisha C & G
Biosystems), 22 November 1994, paragraph
[0002] (Family: none)

Document 5: JP 3-39059 A (Marusan I Kabushiki Kaisha), 20
February 1991, claims (Family: none)

Document 6: JP 61-239852 A (Nikken Food Honsha Kabushiki
Kaisha), 25 October 1986, claims (Family:
none)

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/018352

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

Claims 1 and 5

The inventions set forth in claims 1 and 5 are novel and involve an inventive step in relation to documents 1 to 6.

Documents 1 to 6 do not disclose or suggest food products obtained by fermenting only sprouted brown rice, and it would not have been easy for even a person skilled in the art to conceive of the food products in question.

Claims 2 to 4 and 6 to 7

The inventions set forth in claims 2 to 4 and 6 to 7 do not involve an inventive step in the light of documents 1 and 4 to 6.

Document 1 indicates that sprouted brown rice was fermented together with soybeans by means of *Bacillus natto*, and the fact that both *Bacillus natto* and *Rhizopus oligosporus* can be used to produce fermented soybean food products was well known on the priority date of the present application, as disclosed in documents 4 to 6.

On the other hand, *Bacillus natto* and *Rhizopus oligosporus* are taxonomically different organisms, and thus it would have been impossible for a person skilled in the art to spontaneously conceive that sprouted brown rice is a suitable starting material for food products that are fermented by means of *Rhizopus oligosporus*. However, it would have been easy for a person skilled in the art to conceive of attempting to substitute the *Bacillus natto* from the step for fermenting sprouted brown rice together with soybeans in the invention disclosed in document 1 with *Rhizopus oligosporus*, which, like *Bacillus natto*, is known to be used in the production of fermented soybean food products.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/018352

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

In addition, a person skilled in the art could use an appropriate ratio of sprouted brown rice and soybeans, as appropriate.

Furthermore, the effects that result from the abovementioned features cannot be considered to be significant.

Claims 8 to 10

The inventions set forth in claims 8 to 10 are novel and involve an inventive step in relation to documents 1 to 6.

Documents 1 to 6 do not disclose or suggest the feature wherein the soybeans are disposed on the outside while the sprouted brown rice is disposed on the inside, and it would not have been easy for a even person skilled in the art to conceive of the feature in question.